

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1688 OF 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') seeking quashment of the order dated 12.09.2016 in CrI.M.P.No.216 of 2016 in CrI.M.P.No.1544 of 2013 in S.C.No.23 of 2007 on the file of the VI-Additional District Judge-cum-Sessions Judge, Mahila Court, Visakhapatnam.

2. Heard, Sri Sai Swaroop, learned counsel, representing Sri Ch. Anil Babu, learned counsel for the petitioner-accused No.4. His submission is that the petitioner has not made any submission that the document, which is the subject matter of CrI.M.P.No.1544 of 2013, is not relevant to the proceedings and there was no necessity to reopen CrI.M.P.No.1544 of 2013. It is also his submission that at the relevant time, a transfer petition was pending on the file of the Sessions Judge and perhaps in that view of the matter, such a representation must have been made by the petitioner.

3. Learned VI-Additional District Judge-cum-Sessions Judge, Mahila Court, Visakhapatnam, made specific observation and recorded a finding in paragraph No.6, which reads thus:

“Point : At the time final hearing the petitioner/4th accused submitted that the document is not relevant to the proceedings and there is no necessity to reopen CrI.M.P.1544/203 and that since he heard arguments

advanced by Addl. Public Prosecutor in SC.23/2007, he would file written arguments.”

4. When the learned VI-Additional District Judge-cum-Sessions Judge, Mahila Court, Visakhapatnam, made a definite observation as extracted above, certainly, it is not open to the petitioner now to turn around and make aforesaid submissions through the learned counsel on record. In fact, it is well settled that the party is not supposed to turn around and state that he has not made the statement basing on which an order was passed by the Court below. The Hon’ble Supreme Court settled such an issue in **State of Maharashtra v. Ramdas Shrinivas Nayak and another**¹, wherein, the Hon’ble Supreme Court held that any concession made before the Court and recorded in the judgment cannot be resiled later, except in rare and appropriate cases. Therefore, there is no merit in the present petition.

5. Accordingly, the criminal petition is dismissed at the admission stage itself.

6. As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

March 6, 2017

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¹ AIR 1982 SC 1249